

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NOS. 98 AND 99 OF 1998.

Shri Zaiba Satroji Rane,
deceased by his legal
Representatives:

1. Shri Sanjay Zaiba Rane,
2. Jitendra Zaiba Rane.
3. Smt. Sanyogita Zaiba Rane,
all residing at Vithalapur,
Sanquelim, Goa.
4. Smt. Jyoti Botelho,
Ribandar, Goa. ... Appellants.

Versus.

Shri Ramrao P. Sinai Dubhashi,
r/o Sanquelim, Goa. ... Respondent.

Mr. S.G. Bhobe, Advocate for the Appellants.

Mr. M.S. Joshi, Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 1.04.2004.
DATE OF PRONOUNCING THE JUDGMENT: 7.04.2004

J U D G M E N T:

These appeals are filed against the
Judgments/Awards dated 30.9.87 of the learned Addl.
District Judge, Panaji.

2. The dispute between the appellants who are the
heirs of Zoiba Satroji Rane Sardessai and the

respondent who claims to be the successor-in-title of Tarabai Saheb Gaikwad, widow of Jairao Gaikwad is regarding the receipt of compensation of Rs.182.45 on account of acquisition of 2241 sq.m. of survey No.371 (part) and others in LAC 23/89 and Rs.418.55 on account of acquisition of 5550 sq.m. of survey No.80/3 (part) and others in LAC No.25/89.

3. There is no dispute that upon the death of Zaidev Zaitoji Rane, who had neither ascendants nor descendants, Inventory proceedings took place and 1/12 share each in his properties was acquired by Zaiba S. Rane Sardessai and his two sisters namely the said Tarabai S. Gaikwad and Kamlabai Gujar.

4. The dispute between both the parties having been referred under Section 30 of the Land Acquisition Act, 1894, it appears that only the respondent - Ramrao P. Sinai Dubashi filed a written statement and in the said written statement he pleaded that he was a lawful owner in possession of undivided 1/2 share in the property which was the subject matter of the land acquisition proceedings consequent to purchase made by him from the said Tarabai S. Gaikwad, widow of Jairao Gaikwad consequent to the allotment of her share in Inventory proceedings held upon the death of Jaidev Jaitojirao

Sardessai by Sale Deed dated 18.2.1965 and therefore he was entitled for 1/12 share in the amount of compensation awarded.

5. The heirs of Zoiba S. Rane were represented by his son (AW.1 Sanjay Rane) and he gave evidence on their behalf. The respondent examined himself.

6. There is no dispute that the acquired property is a "Mocasso" land (grant) and this has been stated by both the witnesses who have been examined in support of their respective cases. According to AW.1 Sanjay his Granduncle Zaidev died in 1956 and after his death Inventory proceedings took place in which his father acquired 1/3 portion of his share and other 2/3 were allotted to his Aunts. He stated that his said Aunts never claimed the share allotted to them and his father became the owner of 1/4 share in the entire property by adverse possession. In fact, at that stage objection was raised bringing to the notice of the Court that the said heirs of Zoiba S. Rane had claimed only 1/12, but there is no decision given by the learned trial Court on the said objection. At the same time AW.1 Sanjay stated that the property was not divided and he further stated that they were enjoying 1/4 share in the entire property. He produced a copy of judgment of the

learned District Judge, Panaji dated 31.3.86 in LAC No.4/81 and others. He further stated that the respondent does not have any right to the said property

as they have not enjoyed the same at any time.

7. On the other hand, the respondent (DW.1) produced the said sale deed dated 18th February, 1965 and stated that Tarabai who had acquired the right to the suit property had sold her 1/2 share to him in the entire property Mocasso. He also stated that he has been in possession of the said share from time of purchase and that the tenants who were cultivating the entire property were giving rent to them in respect of their share and for the last about 15 years the said tenants stopped the payment of rent and subsequently he received a notice from the Mamlatdar under Section 18 of the Tenancy Act, 1964. He admitted that previously the Government had acquired a portion of the property "Mocasso" and he produced a copy of the same at Exh.16. He stated that by virtue of the sale deed they had purchased the rights of Tarabai in every property situated at Sanquelim and Karapur and the share purchased by them continued to be undivided.

8. At the time of arguments it has been rightly submitted on behalf of the appellants by learned

Advocate Shri Bhobe that the evidence led on behalf of both the parties is sketchy, but the burden lies on the respondent to show which property the respondent had purchased by virtue of the said sale deed. Learned Advocate Shri Bhobe has submitted that the respondent had not produced a copy of the said sale deed in previous proceedings of LAC No.4/81 and others, nor had claimed any share in the said acquisition and therefore the respondent is precluded to claim that he is a co-owner by virtue of the said sale deed in these cases.

9. The learned Advocate Shri Bhobe has further submitted that the respondent's story that he had not put his claim in the said previous proceedings because P.W.1 Sanjay had told him that he would collect the amount awarded and give him his share and then give Rs.6000/- on 5.3.1992 has been rightly disbelieved by the trial Court.

10. On the other hand, learned Advocate Shri Joshi on behalf of the respondent, has submitted that there is no dispute that the acquired property is situated at Kerim. Learned Advocate Shri Joshi has next referred to Exh.13 namely the statement on oath of the Administrator (Cabeca de casal) to show that the

property described under No.5445 of Book B 14 New was mentioned under Item (Verba) No.37. He has also referred to the same certificate at Exh.13 to show that 1/3 of the said verba No.37 was allotted to the said Tarabai S. Gaikwad. Referring to the sale deed dated 18.2.1965 learned Advocate Shri Joshi has referred to the property under item (q) by virtue of which the sellers have sold right to 1/4 of the property of village Kerim situated in Kerim described as a whole in the Land Registration Office under No.5445 of Book B 14 New. It is the submission of learned Advocate Shri Joshi that the said certificate Exh.13 and the said sale deed clearly show that what was sold to the respondent was also the acquired property situated at Kerim. Learned Advocate Shri Joshi has also placed reliance on the case of **Darshan Singh and others v. Gujjar Singh (dead) by LRS. and others** reported in (2002) 2 S.C.C., 62 wherein the Hon'ble Supreme Court has observed that possession of a co-sharer, becomes adverse to the other co-sharers only if there is a clear ouster and denial of their title and that in normal course possession by one co-sharer of property belonging to several co-sharers, will be deemed to be possession on behalf of the others.

11. As already stated the appellants did not file

any written statement taking any particular plea before the Reference Court and although a whisper was sought to be raised that they had become owners of 1/4 of the entire property by adverse possession, no further evidence was led in support of the same. Admittedly the properties had remained undivided. The appellants had also not cared to file written statement after the respondent disclosed in his written statement that he had purchased the share of the said Smt. Tarabai S. Gaikwad. The appellants had not taken the plea before the Trial Court that the properties sold to the respondent were not the properties which were acquired in the proceedings and therefore the appellants cannot be allowed to urge before this Court in appeal that the properties sold did not include the property which was the subject matter of acquisition. As already stated, both the parties have referred to the acquired property as one of "Mocasso" (grant). However, it can be seen from the certificate and sale deed that the property which was allotted to the said Tarabai was also one of the properties sold to the respondent and that being so, no fault could be found with the order of the trial Court, ordering payment of 1/12 compensation in favour of the respondent. Only because the respondent did not lay his claim by producing the sale deed in the first acquisition proceedings in LAC No.4/81 and others, does

not mean that the respondent would be precluded in proving his right in subsequent acquisition proceedings.

12. In view of the above, I find there is no merit in these appeals and consequently the same are hereby dismissed with no order as to costs.

N.A. BRITTO, J.

sl.